

Abstract

The purpose of this diploma thesis is to analyse certain aspects of the agreement on the performance of an office, a legal instrument with a long history in the Czech legal system. The foregoing type of agreement is regulated by the relevant provisions of the Act on Business Corporations (hereinafter the “ABC”). The paper focuses on the general definition of the agreement on the performance of an office, the subsidiary application of provisions relating to contract of mandate, as well as matters concerning the remuneration stemming from such agreements.

The thesis is composed of an introduction, a main part comprising three chapters, and a conclusion. The individual topics make up chapters which are then divided into sub-chapters (the more extensive of which are further split into sections for the purposes of conciseness). The main conclusions of each chapter are summarised in a partial summary at the end of each chapter. The conclusion summarises all partial summaries and conclusions drawn from the thesis as a whole.

The first chapter is introductory and defines the agreement on the performance of an office as a contract regulating the rights and obligations of a business corporation and a member of its body vis-à-vis each other. The terms of this type of agreement, the conclusion of which is not mandatory, are subject to the will of the contractual parties only. Moreover, chapter one deals with the possibility of concluding an agreement on the performance of an office in the form of a labour contract and the consequences arising from this alternative.

The second chapter focuses on the subsidiary application of provisions relating to contract of mandate. The aim of this chapter is to examine particular provisions of the Civil Code regarding contract of mandate and to determine whether these apply to the rights and obligations of a business corporation and a member of its body vis-à-vis one another. This issue has yet to be subjected to deeper analysis despite the fact that it is now the contract of mandate under the Civil Code instead of the former mandate under the Commercial Code that possesses the subsidiary application attribute. For the purposes of conciseness, this chapter is split into sixteen sub-chapters. Fifteen of these contain a discussion of the individual provisions relating to contract of mandate, the final subsequently concludes with a chapter summary.

The third chapter discusses the issues related to remuneration terms in agreements on the performance of an office. Of all the newly introduced provisions regarding these agreements, it is particularly the provisions on remuneration that have undergone the largest changes in the

ABC. Pursuant to statute, a failure to negotiate remuneration in an agreement on the performance of an office results in the obligation to perform the office gratuitously. On the other hand, however, the law protects members of executive bodies where the failure to negotiate or approve an agreement on the performance of an office is brought about by the business corporation. In these cases, the member of the body has a right to customary remuneration. The chapter is divided into four sub-chapters. The first two are devoted to the differences in remuneration based on the agreement on the performance of an office between personal companies and capital companies as well as the circumstances under which they come into existence. Remuneration clauses in capital companies must meet formal, substantive and procedural requirements, which are crucial for a valid and effective contract. Sub-chapter three focuses on the analysis of the gratuity of the agreement and the legal reasons for it. The gratuitous performance of an office may arise out of an agreement between the parties, the failure to conclude an agreement on the performance of an office or the invalidity thereof, or for the reasons set out in section 59 subsection 3 ABC or section 777 subsection 3 ABC. Particular legal bases for gratuity are discussed in detail in separate sections of the relevant sub-chapter.